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FST-CR19-0167364-T
FST-CR19-0148553-T

: SUPERIOR COURT

STATE OF CONNECTICUT

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

MICHELLE TROCONIS

: FEBRUARY 2, 2021

BEFORE THE HONORABLE JOHN F. BLAWIE, JUDGE

A P P E A R A N C E S:

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1 THE COURT: Good morning. This is State of
2 Connecticut versus Michelle Troconis, would Counsel
3 please identify themselves for the record.

4 ATTY. COLANGELO: Richard Colangelo with Dan
5 Cummings and Paul Ferencek for the State.

6 THE COURT: Thank you.

7 ATTY. SCHOENHORN: Jon Schoenhorn representing
8 Michelle Troconis who is appearing remotely today.

9 THE COURT: Yes, good morning. Good morning,
10 Counsel, good morning, ma'am.

11 Well, before the court today is the state's
12 motion to join these Informations and the defense
13 objection thereto. The court would also like to take
14 up the defense motion to modify the non-financial
15 conditions of Ms. Troconis's release. But I'd like
16 to get to the motion to joinder argument first.

17 So only one state's attorney is going to be
18 making the argument, who's -- who have you elected to
19 proceed on behalf of the state?

20 ATTY. COLANGELO: Attorney Cummings, Your Honor.

21 THE COURT: All right. Great.

22 Attorney Cummings, it's -- you have the floor.
23 I've read the briefs and I'm ready to listen to what
24 you and your colleague have to say.

25 You're muted.

26 ATTY. CUMMINGS: Thank you. Sorry, are you able
27 to hear me now?

1 THE COURT: Yes.

2 ATTY. CUMMINGS: Okay. Your Honor, I won't
3 belabor what's in the brief, I think I summarized the
4 state's case in there as best I could.

5 As Your Honor is aware, having presided over
6 this type of motion many, many times, the trial court
7 has significant discretion in determining whether to
8 join cases together for one trial. The interests
9 that are promoted by joinder are -- are large.

10 In essence, a joint trial would ameliorate the
11 need to put on the same witnesses repeatedly, to tie
12 up judicial staff, it would expedite justice for both
13 the state and the defendant.

14 The test that our Supreme Court utilizes in
15 determining whether a joint trial is appropriate is
16 whether substantial injustice is going to fall on the
17 defendant. In cases where evidence would be cross
18 admissible, the court has found that there is no
19 substantial injustice. And the reasons for that are
20 pretty, I think, obvious. If the evidence is going
21 to come in anyway at one of the trials, then,
22 frankly, what's the point in doing it more than once?

23 So then the only question is does the evidence
24 come in? And I think in a case like this, the clear
25 answer to that is yes, the evidence is going to come
26 in. These charges across all three docket numbers
27 are pretty much part and parcel with each other.

1 This is a broad conspiracy charge, there's multiple
2 moving parts to it, but they all pertain to the same
3 end goal which was the scheme to murder Jennifer
4 Dulos.

5 Now, the conspiracy can be divided into
6 different parts. There's the -- the agreement,
7 there's the overt acts in furtherance of the
8 conspiracy and there's the cover up. But it's pretty
9 impossible to put on any evidence pertaining to one
10 of those parts while segregating the rest of the
11 evidence from the trial.

12 I don't think the court can do that. It would
13 take some pretty significant and very detailed
14 rulings to do that. And I think it would unfairly
15 prejudice the state to prohibit us from putting on
16 the complete picture of what happened here.

17 In this case, any evidence of the attempt to
18 cover up the conspiracy in the actual murder would be
19 relevant because, one, it would show the defendant's
20 participation in the conspiracy itself. It goes to
21 consciousness of guilt.

22 One basis that's not enumerated in the Code of
23 Evidence but that our Supreme Court has long
24 recognized is the state's right to present a complete
25 story of what happened, and that's been recognized
26 throughout our case law, and I did cite that basis in
27 my brief.

1 I think that the story here is one that is going
2 to require presenting a -- a complete picture of all
3 the evidence.

4 There's really no way -- I'm sorry, did Your
5 Honor have a question?

6 THE COURT: No, I just want to confirm,
7 Fernando, are we moving too fast for you or are we at
8 a -- is this pace acceptable? I can't hear you?

9 THE INTERPRETER: Sorry, Your Honor, yeah, I can
10 follow this pace, it's fine.

11 THE COURT: All right. Thank you.

12 THE INTERPRETER: Thanks, Your Honor. Thank you
13 for asking.

14 THE COURT: I won't interrupt again.

15 THE INTERPRETER: Thank you for asking.

16 THE COURT: Thank you.

17 ATTY. CUMMINGS: Thank you.

18 THE COURT: Yes.

19 ATTY. CUMMINGS: So any of the evidence that is
20 presented of, one, the defendant's involvement in the
21 murder conspiracy and any overt acts in furtherance
22 of it would also be motive evidence in the cover up.
23 It would, again, prove her identity, it presents a
24 consciousness of guilt picture. And as outlined in
25 my brief, it actually goes to the essential elements
26 of at least one of the charges, that being the
27 tampering charge which requires that the state prove

1 that the defendant have a belief in the pendency of a
2 criminal investigation.

3 Well, if the state is not allowed to put on the
4 crime that would be the subject of that criminal
5 investigation, how are we going to prove that charge?
6 That necessarily creates a cross admissible basis
7 there.

8 And as I think the court knows, it doesn't take
9 any number of pieces of evidence, it's only one piece
10 that the court needs to find as cross admissible that
11 negates the -- the issue of prejudice.

12 So as I said, I think the -- the state's case is
13 summarized in its brief, I don't want to repeat too
14 much of what's in there, so I'm happy to take
15 questions, concerns from the court. Otherwise, I'll
16 reserve any further argument to respond to issues
17 raised by defense counsel.

18 THE COURT: All right. Well, as a preliminary
19 matter, the court has obviously looked at your briefs
20 and also the case law. You would concede there is a
21 difference between joining multiple defendants in a
22 single trial versus joining multiple files against a
23 single defendant?

24 ATTY. CUMMINGS: Yes, Your Honor.

25 THE COURT: In the joint discussions.

26 ATTY. CUMMINGS: Yes, that's a -- that's a valid
27 distinction although the case law does permit a trial

1 court to do both.

2 THE COURT: No, I'm aware of that, but some of
3 the cases really do deal with multiple defendants one
4 -- one trial versus multiple files one person, one
5 trial, so.

6 As I look at the defense objection, I'm not
7 going to speak for Attorney Schoenhorn, I'll be
8 giving him the floor shortly, he says on page 2,
9 unless the state discloses what evidence it claims is
10 cross admissible, the motion for joinder is
11 premature. Other than what you've already put in
12 your brief I do see some different bullet points on
13 page 2 of your brief, do you wish to elaborate on
14 your offer of proof with respect to what might be
15 cross admissible?

16 ATTY. CUMMINGS: I can, Your Honor, I just want
17 to say I'm not familiar with any authority that
18 requires the state to produce a shopping list of
19 specific evidence it seeks to admit. It's more the
20 evidence of a certain type from the case. The list I
21 provided is not completely exhaustive.

22 I'll note the arrest warrant itself is 39 pages
23 and that does not begin to cover all of the evidence.
24 And for the state to have to identify every single
25 piece of evidence it wants to produce and the cross
26 admissible basis, I think, one, is counterproductive,
27 and, two, I think if defense counsel is truly asking

1 for that, that that's an unreasonable request. And
2 more importantly, it's one that is not required by
3 the law. If the court finds that evidence from -- to
4 prove the defendant's guilt as to one charge is -- is
5 it relevant, and the other charges then all of that
6 evidence would be admissible. And, again, I -- I
7 said Your Honor only needs to find one piece of
8 evidence.

9 But I -- I will note that there are -- there's
10 -- there's witness testimony regarding the
11 defendant's involvement in getting the car cleaned.
12 I think that would show her involvement in the
13 attempt to cover up, that would be relevant in the
14 actual conspiracy charge.

15 As was recently disclosed, Mr. Mawhinney's
16 testimony regarding her participation in the
17 conspiracy would be relevant. And any of the
18 tampering and conspiracy to tamper and hindering
19 prosecution charges.

20 Obviously, the items that I've included in the
21 brief itself, the alibi scripts I think go to both
22 charges completely as one. They show agreement and
23 unity of purpose between the defendant and Mr. Dulos,
24 so they would be admissible in both the conspiracy to
25 commit murder case, as well as any of the tampering
26 and hindering prosecution charges.

27 And, again, Your Honor, I could -- I could

1 probably go on for the rest of the day if I have to
2 go through the entire file and point out every piece
3 of evidence.

4 I think if counsel believes there's -- there's
5 specific pieces of evidence that are not cross
6 admissible or are otherwise excessively prejudicial,
7 then we can take those up on a one by one basis.

8 The -- a decision by the court to join the
9 matters for trial does -- does not mean counsel can't
10 raise objections to the admissibility of evidence
11 down the road. And the court is always free to
12 continue evaluating its joinder decision and decide
13 to sever down the line if it decides that's a proper
14 thing to do.

15 THE COURT: All right. Anything further,
16 Counsel?

17 ATTY. CUMMINGS: No, thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 All right. Attorney Schoenhorn, this is --
20 we're going to get to the -- your other motion, but
21 I'd like you just to respond on the motion to join.

22 ATTY. SCHOENHORN: Absolutely, Your Honor. My
23 response is actually fourfold. So I have procedural,
24 legal, factual and practical responses, but I -- this
25 is the first time I've heard that when the -- the
26 state claiming that it's prejudicial to the state to
27 try these cases separately. There isn't a single

1 case that says that. It's prejudice to the defendant
2 which is the cornerstone of all of the cases that
3 talk about this issue.

4 But let me just address. I have been unable to
5 find, if -- if one looks at Connecticut General
6 Statute 54-57, which is one of the bases for joinder,
7 it specifically refers to cases pending in the same
8 court.

9 So when we talk about procedural, I think this
10 motion is premature because if two of the cases, as
11 I've argued, at least two of them are improperly in
12 Stamford under either statutory or constitutional
13 law, then the court can't out of a matter of
14 convenience claim well, they're already here, I'll
15 just combine them. There are three, I note, three
16 separate conspiracies alleged.

17 I hear Mr. Cummings saying there's really only
18 one conspiracy, then where are these extra charges
19 from? The warrants -- I mean the long form
20 Informations that were filed last August give almost
21 no details.

22 I asked for a motion for a bill of particulars.
23 And one of the other pleadings the state actually
24 said, well, if we're not -- if we don't think I've
25 been given enough information, then, yes, let's file
26 a bill of particulars and then we'll get into more
27 detail. Because the long form Information,

1 essentially, just tracks the statute.

2 So it's not like I can know what evidence -- I'm
3 going to emphasis -- factual evidence that I could
4 rely on or the state can rely on to say that it's
5 cross admissible. Their only argument in their memo
6 is that it's cross admissible, not any other reason,
7 as I understand it.

8 Be that as it may, to say that the warrants set
9 forth their case also raises the issue -- I have
10 filed now two motions to dismiss, there are several
11 motions to suppress. And let me be clear if it's not
12 clear, I've alleged in those motions that the
13 warrants themselves contain outright falsehoods,
14 reckless disregard of the truth, and important and
15 material omissions. Unfortunately, Your Honor, you
16 can't hear those, by statute you're -- and by the case
17 law, you are prohibited from considering that.

18 THE COURT: I'm aware of that, Counsel.

19 ATTY. SCHOENHORN: Right.

20 THE COURT: But also there is a hundred pages of
21 details set forth in those various warrants. I know
22 you allege inaccuracies or omissions, but to say you
23 don't have information, how do you -- what do you --
24 how do you respond? The state did lay out very
25 lengthy affidavits, the factual accuracy of that will
26 have to await a determination by one of my
27 colleagues. But it's not that you are bereft of

1 information, is it?

2 ATTY. SCHOENHORN: Well, I'm bereft of evidence
3 that would be admissible in court. I submit that
4 what Kimball wrote in those warrants is mostly
5 theory, speculation. It might be evidence admissible
6 against Mr. Dulos if he was still a defendant in a
7 case, if there was a -- a case pending against Mr.
8 Dulos then the argument would be different as to
9 whether or not the case should be consolidated
10 against my client.

11 But under the circumstances, almost everything
12 that's set forth in that warrant has nothing to do
13 with Ms. -- with Ms. Troconis. Even the pejorative
14 remark by Mr. Cummings that there are alibi scripts,
15 there's no such thing. There's a factually ninety
16 nine percent accurate information, including her
17 cellphone records that were spelled out.

18 And if we would -- if the court ordered the
19 release of the interrogation videos of my client,
20 there's, I believe, seven, eight hours of that, she
21 explains in that that the divorce lawyer, Jacob
22 Pyetranker, told Mr. Dulos to keep track of what you
23 -- what was going on that Friday because he had
24 gotten a report that Jennifer Dulos was missing, and
25 they should keep track of their whereabouts.

26 The -- the original of that, of those documents
27 -- I want to emphasis, the original of those

1 documents were given to Attorney Bowman. The police
2 and Mr. Colangelo all know that, they were sitting in
3 the room on June 6th when Mr. Bowman confirmed that he
4 had that, that those documents were given to him.

5 So whatever the police found at the house was a
6 copy, a photocopy of something, not what was given to
7 the lawyer. So to even to suggest that these are --
8 this is "evidence", at the very least, at the very
9 least they would have to set forth what is actually
10 admissible against my client.

11 I understand there's things like a -- you know,
12 a person in the distance riding the bicycle and they
13 say well, we think that that is Fotis Dulos, we think
14 that's a -- the red truck that belongs to one of the
15 employees of the Fore Group. We think that Fotis
16 Dulos was driving it.

17 But let's be clear, Your Honor, they would, at
18 least, in writing have to set forth what evidence is
19 cross admissible. They mistake oral argument, they
20 mistake theory versus evidence that is cross
21 admissible.

22 Keep in mind, Your Honor, one of these charges
23 is pretty clear is conspiracy to commit murder. The
24 claim in that case is somebody was, I don't know,
25 stabbed, cut up, they claim that there was a
26 substantial amount of blood, that is belied by the
27 evidence. Again, they want to put that in writing

1 and say, yes, there was a substantial amount of
2 blood. There's no such evidence that I'm aware of,
3 none.

4 As even the motion I filed today, again, it goes
5 to the lack of probable cause, they found three
6 billionths of a gram of DNA on a car seat that had
7 been in the -- in the truck. To suggest that from
8 that you can show a conspiracy to clean a truck
9 because she picked up Fotis Dulos at the car wash to
10 go to see her lawyer, to go to -- that's what was the
11 next stop, her lawyer's office. Again, it's -- it's
12 just pure speculation.

13 So to even suggest that, okay, she picked him up
14 at the car wash, that should be combined with the
15 allegations of an actual murder that -- that they're
16 alleging, alleging. I don't believe that they have
17 yet to prove an actual murder took place down in New
18 Canaan is where the concept of prejudice is, unless I
19 see some actual evidence that they intend to offer to
20 show that.

21 So for -- to give you a perfect example, Your
22 Honor, just -- just for the sake of argument, argue
23 that she helped Fotis Dulos clean up and throw away
24 trash in Hartford on Albany Avenue, which is the
25 first arrest. In their memorandum they say she acted
26 as a lookout. There is zero evidence of that.

27 So I would like to know what evidence they would

1 intend to show that she was a lookout. Looking out
2 for what? It was in the middle of a public street, a
3 major traffic thoroughfare in Hartford. And traffic
4 is going by, it's a -- it's the middle of the late
5 afternoon, it's not dark. So looking out for what?
6 The sanitation truck?

7 I don't understand that there's actually
8 evidence that they intend to offer that they could
9 show is cross admissible. Because after all, charges
10 like tampering and hindering, you don't actually have
11 to prove the underlying crime to be proven, you just
12 have to prove they -- she was aware there was a
13 police investigation or an underlying felony, believe
14 there was an underlying felony that she would be
15 trying to get rid of evidence or in some way destroy
16 evidence which is what those charges are about.

17 You don't even have to -- you just have to prove
18 there was an investigation as to that with regard to
19 tampering. You don't even need to have a completed
20 investigation or prove the underlying offense.

21 So to suggest that they need to prove an actual
22 murder occurred and that there was a conspiracy to
23 commit it just to show that she helped dispose of
24 evidence and was aware of it, that's not the -- the
25 law, Your Honor. That's simply not the law.

26 So like I said, I don't even have all of the
27 discovery. I keep filing -- and that's part of the

1 problem even with this motion being heard at this
2 time. Your Honor has yet to move on the -- on the --
3 rule on the venue question, and that's why, you know,
4 the question is whether those need to be ruled on
5 first, number one.

6 But also, number two, it's not like the Wheel of
7 Fortune or the board game, Battleship, where they get
8 -- I file a motion for discovery, they give me a
9 massive amount of stuff. And I'll just note, it's a
10 document dump, there's no, for most part, indexing.
11 They give me five or six phone GPS and, what I call,
12 cell records for multiple phones. It's not
13 searchable. It's given to me in a form that I have
14 to look through. So I can spend days, weeks, which
15 I've done.

16 And then I notice something's missing, I file
17 another motion, I don't get it until after I filed
18 the motion, maybe a day or so before we're having
19 another pretrial. Like I just got last week,
20 Thursday or Friday, some additional material which
21 we'll talk about in a minute.

22 But I'm just saying I still I don't have
23 everything. And I'm going to have one of the state's
24 attorneys there say that I -- there is nothing else
25 and I just don't buy that. But they've -- I wouldn't
26 want them to say that on the record because I know
27 there are still things that I don't have.

1 In addition to that, Your Honor, if, in fact,
2 there -- because there are also motions to suppress,
3 ninety percent, perhaps -- and, again, Your Honor's
4 not ruling on these so I don't want to put you in the
5 -- in the uncomfortable position of having to
6 consider the likelihood that some or all of the
7 evidence that I've already filed motions to suppress
8 and dismiss on will not come in. And, therefore, the
9 court is making a decision on something whereas what
10 they claim they're going to offer is not even going
11 to come into evidence.

12 That's another reason why I submit that
13 consolidating them at this point is completely
14 premature.

15 And part of the awkwardness of that, Your Honor,
16 is that part of the allegations in this is that you
17 personally were misled by this -- by the
18 investigators in this case. And then the state adds
19 extra conspiracy charges, I note, without probable
20 cause. If there's only one conspiracy as I hear Mr.
21 Cummings say, then nolle those other charges. In
22 fact, toss out two of the three criminal cases then
23 we don't have to worry about consolidation. We have
24 one criminal Information, they could -- they still
25 are within the statute of limitations if they want to
26 add a tampering and a hindering to that.

27 But the idea that two cases in Hartford should

1 be -- should be moved without agreement to another
2 judicial district just for the sake of convenience
3 for the state, I don't think there's a single case
4 that I could find in Connecticut that allows that.

5 And so therefore, I -- I submit that proper
6 jurisdiction is one of those issues that would have
7 to be decided first, the fourth (sounds like) would
8 be allowed to be presented in that -- in that way.

9 Now, I understand convenience, you know, that's
10 usually a legitimate argument that the state has
11 made. But I don't think it overcomes either the
12 statutory jurisdiction requirement or, as I've
13 argued, a Sixth Amendment Constitutional argument
14 that a case has to be tried in the jurisdiction
15 created by -- by law, in this case by the Connecticut
16 Legislature.

17 The one thing I want to talk to as an aside, and
18 the -- and the state keeps bringing it up in their --
19 in their memoranda, is the notion that Attorney
20 Andrew Bowman waived all of Ms. Troconis's rights
21 without knowing it.

22 I was prepared to put Mr. Bowman on the stand to
23 say he waived nothing. There were no discussions
24 about keeping the cases somewhere that they didn't
25 belong.

26 When a person is arraigned they are not
27 necessarily even in possession of the criminal

1 Information ahead of time before bond argument is
2 made. Motions aren't due at that point.

3 So the idea that it was waived, I just want to
4 say for the record, to waive those rights based on --
5 on silence would not only be -- be improper, but I
6 would -- I'll say on the record if, in fact, he did
7 that, then he's committed legal malpractice. And I'm
8 not willing to say that because in my view it's
9 absurd to suggest that on early stages of the case
10 before the discovery is -- is made that a -- that a
11 lawyer should immediately assume that the case has to
12 be -- the jurisdiction has to be raised when it's not
13 subject matter jurisdiction but trial jurisdiction.

14 So --

15 THE COURT: Counsel, one point --

16 ATTY. SCHOENHORN: Yes.

17 THE COURT: -- as I'm listening to you.

18 ATTY. SCHOENHORN: Yes.

19 THE COURT: You're claiming you have enough
20 information and evidence to support moving these
21 cases to Hartford, but on the other hand, you're
22 claiming you don't have enough information or
23 evidence to object to their motion to join.

24 ATTY. SCHOENHORN: It's just based --

25 THE COURT: Is that correct?

26 ATTY. SCHOENHORN: -- on the warrant. It's
27 based on the -- Oh, I want to be clear, Your Honor,

1 I'm not talking about evidence, I'm talking about the
2 facial challenge, the two Informations state -- the
3 first one states that the incident happened in
4 Hartford on or about May 24th, 2019. The arrest from
5 September states it happened in Avon, Connecticut on
6 or about, I think, May 29th, 2019.

7 On their face, those two incidents occurred in
8 the Hartford Judicial District. And this goes to the
9 argument we made a month or two ago.

10 So I'm just indicating they're either -- if
11 there's only one case then why are there three
12 separate files that need to be consolidated, which I
13 submit the court cannot do from different judicial
14 districts without either an agreement or an order in
15 the -- they have to be remanded first and perhaps a
16 judge there decides whether there's a reason to
17 transfer them. I don't know, but I'm not arguing the
18 facts to Your Honor at this point, I'm arguing the
19 face of the criminal Informations. And that's how
20 the court decides where a case is to be tried.

21 So for example, if they say it happened in
22 Stamford but it turns out it happened in Bronx, New
23 York, well, then a case would end up getting
24 dismissed. I -- that's the argument we made
25 previously. I just don't want to get into that
26 argument today.

27 THE COURT: No, you don't need to repeat your

1 earlier arguments, no.

2 ATTY. SCHOENHORN: Okay, right.

3 THE COURT: All right.

4 ATTY. SCHOENHORN: So -- so now I look at cases
5 like some of the ones that are cited here, the
6 Boscarino -- *State versus Boscarino*, *State versus*
7 *Payne*, P-A-Y-N-E. There's the LaFlora case. And
8 Your Honor is correct, some of these cases deal with
9 codefendants, not different cases. Some are the
10 motive for the underlying crime predates if they've
11 been combined.

12 But they would -- but the state does not have to
13 prove a murder happened in order to prove that there
14 was not with knowledge that a criminal investigation
15 had commenced or was about to be commenced, which is
16 the element that they have to prove.

17 And, moreover, I'll note the state has to
18 present this by -- I think it's in the *Payne* case, a
19 preponderance of the evidence that it's cross
20 admissible, they haven't done that.

21 So at the very least they would have to make an
22 offer of proof either on the record, we're gonna call
23 this person, we're gonna put in this evidence that's
24 also admissible against Michelle Troconis. They
25 can't simply say we have all this sneaky stuff that
26 -- that Fotis Dulos was doing, we'll automatically
27 admit it as to Michelle Troconis.

1 And like I said, I submit that's what in the
2 warrants not only are mostly guess work, speculation,
3 but there's falsehoods. And that's why simply saying
4 I can look at the warrants, you know, if it turns out
5 they don't have that evidence well, then they've
6 misled whichever -- whoever the trial judge is as
7 well by saying, yeah, we have this evidence and then
8 not presenting it. And just saying, well, we already
9 combined these cases, so you know, my bad. You know,
10 I'm just a --

11 THE COURT: No, this court is always ready to
12 revisit earlier rulings in light of new
13 circumstances. And, again, I haven't made a ruling
14 but there's no finality to anything until there's a
15 verdict if this case ever gets to trial.

16 But I'm happy to take changed circumstances into
17 account if one of my rulings turns out to be based on
18 something that is no longer the operative assumption.
19 So --

20 ATTY. SCHOENHORN: Absolutely, Judge.

21 THE COURT: -- just to assure you of that.

22 ATTY. SCHOENHORN: Oh, no, I wasn't referring to
23 you, I was saying the trial judge and the prosecutor
24 at the time, whoever is trying the case, would
25 suddenly that evidence is not coming in, is not
26 admissible, but the case has already been transferred
27 and we've already started trial. If a -- if a

1 mistrial happens then, I submit that's also double
2 jeopardy, it was improperly transferred based on
3 representations that they can't justify.

4 I look at page 2 of the memo, they have these,
5 you pointed out these five bullets proofs -- bullet
6 points. There's reference to -- to helping Dulos
7 dispose of evidence from the crime scene in dumpsters
8 by "acting as a lookout". There's no evidence of
9 that. First of all, there's no dumpsters, so I don't
10 even know where that comes from. This is just made
11 up. There's no dumpsters. And I don't know what
12 evidence there would be to say that she acted as a
13 "lookout".

14 THE COURT: Is she sitting in the front
15 passenger seat, allegedly?

16 ATTY. SCHOENHORN: Yes.

17 THE COURT: Okay.

18 ATTY. SCHOENHORN: Allegedly, yes. Okay.

19 But, again, you would need more than her mere
20 presence to say that she's acting as a lookout. Do
21 they have some witness to that? I don't -- I'm not
22 aware of any.

23 We looked at the next thing, leaving -- assisted
24 in having the car in which -- used to transport
25 Jennifer's body, cleaned. I don't know what that
26 evidence is, at all. It's not -- there's some
27 speculation that the vehicle went down to New Canaan

1 based on it being seen in a cul-de-sac a half a mile
2 away. But I don't know what that evidence is that
3 she assisted. There's no evidence. There's no
4 video. There's no evidence of that.

5 The next thing it says implementing an alibi
6 script. She didn't help Dulos do anything. She
7 prepared something in her own handwriting. That's
8 the other thing though, the warrant falsely suggests
9 that it's -- they're -- it's jointly written.

10 She wrote something, she gave it to her lawyer.
11 They searched the house and they, I guess, searched
12 every single piece of paper in the entire house.
13 They find something Dulos wrote. There's none of my
14 client's handwriting on that, on what Dulos wrote.
15 Nothing. And there's no handwriting of Dulos on what
16 she writes.

17 But she also had told the police, she told them
18 why she did that and for whose purpose, that's
19 notably omitted from the third warrant.

20 But again, I -- I'm just pointing out they've
21 made representations here, who's going to testify to
22 these things? How is it going to get into evidence
23 to make these "cross admissible"?

24 It says repeatedly misleading the state police
25 to throw off their investigation. Again, there are
26 these videos, if they're going to play the videos,
27 they're going to claim that's misleading? We don't

1 need any witnesses from Westport or New Canaan from
2 where the videos were taken to introduce that
3 evidence. That can be played without having to call
4 any additional witnesses.

5 And, finally, it says, assisted Dulos in
6 creating a false telephone record at the time of
7 Jennifer's murder. Again, I don't know who's going
8 to testify to that.

9 If we're talking about this call from Greece
10 that was -- that was -- was answered at the house in
11 Farmington, again, I -- I don't know who's going to
12 testify to that. But the phone record doesn't -- is
13 not going to require any additional time.

14 But, again, if there are three separate
15 conspiracies, answering a phone call is certainly has
16 -- is not a -- considered a brutal or -- I'm going to
17 look for the exact words here -- you know, the
18 Boscarino Payne evidence, I want to use the correct
19 terminology -- gruesome, violent, those are -- those
20 are the questions.

21 I mean, and those cases say, look, you have one
22 case where it's more -- that's gruesome and the
23 others aren't. There's a more likelihood a jury's
24 going to say well, look at all these different
25 charges. You put these case -- cases together if
26 there's evidence of one, it's more likely going to
27 convict of something just because of combining.

1 That's the danger, that's the danger of the
2 prejudice.

3 You know, I mean, I don't have any objection if
4 the court wanted to -- You know, part of the problem
5 is I file motions, I'm trying not to put everything
6 out in the public because I don't want the courts or
7 whichever judge is going to rule on these things to
8 have to rule on something ex parte. They would
9 require -- what I'm asking for is a hearing so I'm
10 providing just enough evidence under Franks (sounds
11 like) to get a hearing. And then we'd have a hearing
12 in which all of these things can be played.

13 But I submit that even how the -- how the
14 detectives characterized Ms. Troconis's six, seven,
15 eight hours of interrogation was a misrepresentation,
16 I've listened to it multiple times. And they -- it's
17 -- it's just not actual evidence the way Mr. Cummings
18 has described it.

19 If a murder happened at all -- and I'm not
20 agreeing there -- there is one, there's right now a
21 mystery and a disappearance -- that would be clearly
22 more shocking, clearly more brutal based on the
23 theory that the state has suggested. Cutting up a
24 body, whatever they're claiming, it's not --

25 THE COURT: I didn't see --

26 ATTY. SCHOENHORN: -- clear what evidence
27 they're going to have.

1 THE COURT: I didn't see -- I didn't see any
2 allegations they cut up a body.

3 ATTY. SCHOENHORN: They have an MD --

4 THE COURT: Counsel, did -- I don't remember
5 seeing an allegation that in any way there was a
6 dismemberment, et cetera. Just blood in the garage,
7 as I recall, and blood at the house.

8 ATTY. SCHOENHORN: I'm sorry --

9 THE COURT: But, again, we all know the law
10 makes no distinction between direct and
11 circumstantial evidence. You are correct, we -- we
12 apparently have no direct evidence that Jennifer
13 Dulos is deceased.

14 ATTY. SCHOENHORN: Right.

15 THE COURT: We don't have it, it's
16 circumstantial.

17 ATTY. SCHOENHORN: Right, right. Absolutely.

18 THE COURT: All right.

19 ATTY. SCHOENHORN: But my point being is you
20 don't need an actual deceased in order to prove a
21 tampering or a --

22 THE COURT: Yeah.

23 ATTY. SCHOENHORN: -- or a hindering --

24 THE COURT: Right.

25 ATTY. SCHOENHORN: -- unless the claim is going
26 to be that the only underlying crime -- and that's
27 what's also not clear, they won't tell me in the --

1 in the -- that's why I filed the motions for bill of
2 particulars, what the underlying offense is that
3 she's alleged to have assisted in covering up. And
4 that's -- again, if there's only one --

5 THE COURT: Yeah.

6 ATTY. SCHOENHORN: -- that at least makes it a
7 little bit easier, but then there's only one
8 conspiracy, not three, that they added. I think just
9 -- I mean, if I'm being cynical, they added it --

10 THE MONITOR: I'm sorry, this is Lisa, the
11 monitor, sorry, Judge, to interrupt. But that -- you
12 keep -- he keeps breaking up quite a bit lately.

13 ATTY. SCHOENHORN: Oh, me?

14 THE MONITOR: So -- Yes. If you could mute
15 yourself and then turn it -- then unmute yourself,
16 that sometimes helps. I don't know if you've heard
17 that, Judge, but it's --

18 THE COURT: No, it -- it has gone in and out but
19 I've tried hard to listen, I have heard.

20 Everyone else is muted, but that makes more
21 sense, just counsel and the court should be unmuted.

22 THE MONITOR: Right, thank you, Judge.

23 THE COURT: Thank you.

24 ATTY. SCHOENHORN: I do apologize, I don't if
25 maybe if I speak a little quieter it will not break
26 up as much, I don't know. I just -- I just don't
27 know, so I do apologize to the court.

1 THE COURT: No, you have nothing to apologize
2 for, Counsel.

3 ATTY. SCHOENHORN: So and I'll just note one of
4 the cases that the state cites is the *State versus*
5 *LaFleur*, F -- L-A-F-L-E-U-R, it's 307 Connecticut at
6 115. And they talk about Practice Book Section 41-
7 19, and they emphasize that the paramount concern in
8 deciding on joinder -- and, again, all these cases
9 deal with cases pending in the same court -- and when
10 I say that, I mean properly in the same court,
11 properly in the same court -- is whether the right to
12 a fair trial is impaired.

13 And it does not address, though, when there's
14 questions about cases coming from a different part of
15 the state, and whether they're there, you know,
16 improperly or properly how that should play out.

17 There's an omnipresent risk, as I note, I think
18 *Boscarino* makes this clear, that a jury -- there's a
19 danger when there's a whole bunch of charges, as
20 there are here, that a person charged with so many
21 things must be guilty of something. And that's
22 something -- and that's a concern.

23 We looked at the *Boscarino* factors, I'm now
24 moving into more of a legal argument here. There --
25 there are -- there is the whether or not there are
26 discreet easily distinguishable factual scenarios. I
27 submit there are not as the state is conceding, they

1 think this is all cross admissible, so there's not
2 going to be any distinction between these cases.

3 Two, whether any of these charges are of a
4 violent nature or involve brutal and shocking
5 conduct. If Dulos did what the state believes he
6 did, I don't know of very many cases other than that
7 -- the Carpenter case, the airline pilot in Newtown,
8 anything more brutal or shocking involving a single
9 homicide victim, in fact, if there is one here.

10 And the duration and complexity of the trial. I
11 mean, let's be clear about that, Your Honor, there
12 are two cases where the -- where the evidence will
13 take for the -- for the Hartford case, one day.
14 Their case in Avon involving a car wash, less than a
15 day. But trying to prove a conspiracy to commit
16 murder, I submit it's going to take months.

17 And so to throw those cases in and say they're
18 easily distinguishable when I submit they're not, is
19 one -- is one of the things that the court has to set
20 forth. And I submit that the state hasn't answered
21 any of those issues. They simply said, well, you
22 know, cross admissible and we think we can show this
23 or that without testifying (sounds like) what the
24 evidence is, how they would separate it. How they
25 would say that whatever was in those trash bags
26 Michelle must have known what's in them, and prove
27 that she was -- had access to it.

1 So I mean, these are just some of the legal
2 practicalities that we're -- that we're facing with
3 regard to combining these cases at this time. I
4 mean, I may withdraw the objection after it's clearer
5 what the evidence is.

6 I'm saying right now I can't agree to it and I
7 don't think there's a basis right now on the record
8 to agree to it.

9 Normally, when I've done -- when I've had cases
10 where there's consolidation, including a case I had
11 involving two unrelated murder cases that were
12 combined into one. They were discreet, one case was
13 three days, the other was four or five days, this
14 goes back to the nineteen, I think late eighties,
15 early nineties when I tried those cases. But one
16 didn't overlap in any way other than the defendant
17 who was the same defendant, but different witnesses,
18 different police. Everything was separate.

19 So yes, in that case there was the prejudice was
20 deemed minimal, and it could be solved with jury --
21 proper jury instruction.

22 THE MONITOR: We just lost the Judge.

23 ATTY. SCHOENHORN: Oh.

24 THE MONITOR: Yes.

25 (Pause)

26 ATTY. SCHOENHORN: I don't know, Judge, how much
27 you lost of what I just said.

1 THE COURT: Well, here's where I was, all of a
2 sudden it -- the screen went blank but you were
3 discussing a murder trial or some charge thirty plus
4 years ago in a joinder situation in Hartford.

5 ATTY. SCHOENHORN: Right. And just I'll -- I'll
6 summarize, I don't need to go in -- I think the court
7 reporter got it.

8 But basically, there were different police
9 involved in the two, different witnesses for the two,
10 the only thing that was similar was the same
11 defendant was charged in both, and it was -- nothing
12 was cross admissible in those two cases. They were
13 both shocking cases, but they were individual cases
14 and the jury was given multiple, multiple jury
15 instructions of what to consider and what not to
16 consider.

17 I think that a conspiracy is even tougher,
18 Judge, because under the -- under Bourjaily, which is
19 the U.S. Supreme Court case, a court would first have
20 to determine that any statement of any witness was
21 part of a conspiracy before it could be admissible.

22 So anything that Mr. Dulos may have said at
23 different times outside my client's presence,
24 anything that Mr. Dulos may have done outside my
25 client's presence, you're going to have to first show
26 it's related to a conspiracy first, and not something
27 that's just hearsay related to a third or fourth

1 party under those circumstances.

2 I note one case, Your Honor, *State versus Ellis*,
3 270 Connecticut 337. If the defendant's conduct or
4 if one of the coconspirator's conduct is
5 substantially more egregious than in the other case,
6 that's (indiscernible) is deemed improper. And I
7 submit that that's where we're facing, that's where
8 we're at right now.

9 Now, I can't get off this subject of joinder
10 without discussing the recently disclosed information
11 about the jailhouse informant named Kent Mawhinney.
12 And, you know, I've watched his video, I understand
13 he -- without claiming any liability for himself, he
14 exonerates himself from any misconduct, he claims
15 that he heard my client and Mr. Dulos solicit him to
16 engage in a conspiracy to "do away" with Jennifer
17 Dulos.

18 I'm going to -- so I don't hear Mr. Cummings say
19 yes, that's our star witness, that's who we're going
20 to rely on. You know, if that's the case, that
21 certainly puts this in a different category.

22 But, you know, we have -- and this is why, you
23 know, one of my outstanding motions is I have no
24 discovery, whatsoever, about the circumstance that
25 led Your Honor to release Mr. Mawhinney essentially
26 with -- without putting up a penny that he won't get
27 back. Fifty thousand dollars cash, his parents'

1 house. He -- he has no -- he has no loss at this
2 point to get out of jail.

3 And he did get out of jail and it was all done
4 under some -- some -- I won't say secret, but it was
5 all done ex parte. And there's no record, nothing
6 that I can look up. The discovery doesn't answer
7 those questions that was just given me last week.

8 I went through some, I went through it quickly,
9 it -- it leaves out, it's got the -- the police and
10 the lawyers back and forth editing a statement back
11 and forth until they come up with what they like.

12 But it leaves out the state's attorney, it
13 leaves out Mr. Colangelo, it leaves out the court.
14 So we have to speculate on what happened to lead --
15 you know, I mean, if it comes down to did Mr.
16 Mawhinney sing for his supper, to use an old phrase,
17 and that's why he got out.

18 We know, at least, that's the main case against
19 Michelle Troconis, that's their star witness. All
20 right. At least that's evidence I'm aware of, but
21 they haven't said that's who they're going to rely
22 on.

23 But even, I want to point out, even if they do
24 and Mr. Mawhinney claims to have no knowledge of the
25 scheme, what was done or anything, he's not
26 admissible in a -- in a tampering case. His evidence
27 would not be admissible in a car washing case. He

1 knows nothing about any of those things.

2 Even if he's otherwise credible, and he could
3 say he was sitting around while they enlisted him to
4 participate and he just kept quiet, you know, you
5 know, I mean and I -- and I'd -- and I'm gonna say
6 I'll be happy -- I don't want to use the word happy,
7 wrong term. I will be prepared to cross examine Mr.
8 Mawhinney about those allegations, about his racism,
9 his misogyny, his loss of his license, his violating
10 of court orders, his fleeing the state and having to
11 be stopped by the state police, all those things.
12 But at least that's an allegation and the state could
13 argue and I could respond how that evidence is
14 admissible, cross admissible, because I submit it
15 wouldn't be.

16 But be that as it may, I can't ignore the -- the
17 fact that Mawhinney has made a statement and is
18 seeking some kind of consideration. I can't even get
19 his Hartford cases, it's all sealed.

20 THE COURT: Well, Counsel, let me just address
21 one issue.

22 ATTY. SCHOENHORN: Yeah.

23 THE COURT: You are correct, it would have been
24 preferable to have a hearing where Mr. Mawhinney's
25 bond was modified. I understand the defendant's
26 spent a substantial amount of time incarcerated, I
27 was in receipt of a written motion from his attorney

1 asking for modifications, the state did not object, I
2 granted it on the papers.

3 But I just don't -- I want to clear the air that
4 you think somehow I was involved in some kind of a --
5 of a backdoor wink wink to get Mr. Mawhinney out of
6 custody. He spent more time in jail than anyone in
7 this case, as far as I know. And I -- I thought at
8 the time, and I still believe that my actions at the
9 time were correct.

10 Would it have been preferable to do it at a
11 hearing on the record? Yes. I will concede that.
12 But that's where we are with Mr. Mawhinney. But --

13 ATTY. SCHOENHORN: Your Honor, I just want to --
14 I'm not suggesting that it's improper to do that, I'm
15 just saying that if -- if Mr. Mawhinney is now the
16 star witness for the state, and I'm certainly
17 entitled to cross examine about the --

18 THE COURT: You will.

19 ATTY. SCHOENHORN: -- circumstances of his
20 release and the lack of objection by the state, it
21 doesn't -- it doesn't imply the court did anything
22 wrong. I want to be clear.

23 THE COURT: Okay.

24 ATTY. SCHOENHORN: Maybe everyone should get
25 their bonds reduced. I'm just saying --

26 THE COURT: (Indiscernible).

27 ATTY. SCHOENHORN: I'm not -- I'm not suggesting

1 it was improper, I'm just saying that it came with
2 the state not objecting in -- in exchange for a quid
3 pro quo is all I'm saying. And it doesn't -- and the
4 court doesn't need, you know, the court -- the state
5 doesn't object to a bond reduction, the court will
6 grant it ninety percent of the time.

7 So I'm -- I didn't want the court to think I
8 thought Your Honor did something --

9 THE COURT: Okay.

10 ATTY. SCHOENHORN: -- incorrect.

11 THE COURT: Well, I respect the presumption of
12 innocence and I know that there's financial and
13 nonfinancial conditions of release, and Mr. Mawhinney
14 is on his own bracelet right now as we speak, so.

15 ATTY. SCHOENHORN: Right.

16 ATTY. COLANGELO: Your Honor, if I may. You
17 know, Counsel is way far afield on -- on the motion
18 to join, and he started talking about Mr. Mawhinney.
19 And I was the one that agreed to the motion, Your
20 Honor.

21 And if you look at the motion it was pretty
22 clear that his father had a substantial illness and
23 he wanted to go see him. He was posting substantial
24 property and interest in that property. That is why
25 I didn't object, just like I didn't object to Ms.
26 Troconis going to see her father when Attorney
27 Schoenhorn raised that as an issue a few months ago,

1 because he was recovering from COVID.

2 THE COURT: Noted.

3 ATTY. SCHOENHORN: I thought only one state's
4 attorney was speaking, but, you know, I mean, I
5 understand what Mr. Colangelo is saying. He did
6 object at the time on the record, so let's not -- I
7 don't want to get into that with him right now.

8 I think that's all I have to say on the motion.

9 THE COURT: Okay.

10 ATTY. SCHOENHORN: And I want to emphasize
11 though, I brought up Mawhinney because the state
12 would have to make an offer of proof. They can't
13 simply say we think she was involved, we think she
14 was doing this or that. What's the evidence that
15 would be cross admissible, not we'll just put these
16 cases together and we can all speculate together on
17 what is cross admissible or not.

18 As I understand admissible, it's admissible as
19 evidence and the state has to offer by a
20 preponderance what that evidence is going to be
21 before there is a decision. And that goes back to my
22 first argument, it's premature until they've at least
23 made an offer of proof as to what evidence they
24 believe is cross admissible in those three cases.
25 Thank you.

26 THE COURT: Thank you. Attorney Cummings,
27 you're muted.

1 ATTY. CUMMINGS: Thank you, Your Honor, can you
2 hear me?

3 THE COURT: Yes.

4 ATTY. CUMMINGS: All right. If I could -- I'll
5 just briefly respond if that's all right.

6 I just want to start off addressing one of the
7 procedural issues Attorney Schoenhorn raised
8 regarding joinder and how it would be improper, I
9 guess, to join Informations from outside the judicial
10 district. That's, actually, a ground to have the
11 cases tried here, Practice Book 41-23 governing the
12 transfer of prosecutions grants the court the ability
13 to transfer a matter to this judicial district --
14 Quote, where the joint trial of Informations is
15 ordered pursuant to Section 41-19 and the cases are
16 pending in different judicial districts or
17 geographical areas.

18 So I don't think there's any merit to Counsel's
19 argument, at all. The Practice Book specifically
20 contemplates that if the court were to determine the
21 trial should be joined for any of the -- the reasons
22 raised by the state, then it wouldn't matter that
23 they were in judicial -- different judicial
24 districts, they would all be tried where the court
25 orders the joinder motion.

26 Moving on from that, I do want to note that what
27 the state sees here, and I will address the arguments

1 that he's raised in more detail, but there's this
2 overarching theme to Attorney Schoenhorn's arguments,
3 the motions he's filing, which is that he wants the
4 state to explain it's theory of the case and the
5 evidence in a lot more detail than the state is
6 required to do.

7 The state's turned over substantial discovery
8 and materials, we've set forth the allegations.
9 There's, as Your Honor noted, three comprehensive
10 warrants counsel has at his disposal. The state is
11 not required to hold defense counsel's hand and walk
12 him through every piece of evidence explaining how
13 the state intends to use it at trial and what
14 witnesses it intends to call.

15 He's got to put in the legwork to actually
16 preparing his own defense. We don't have to prepare
17 it for him.

18 And all of these motions he's filed are,
19 basically, complaining that I don't understand the
20 significance of this evidence, the state needs to
21 explain what it's doing more. I don't know a single
22 case that says we have to do that. And I don't know
23 a single case that says we have to proffer evidence
24 in any particular detail.

25 In fact, none of the cases I reviewed in
26 researching his motion say anything close to that.
27 Attorney Schoenhorn is crafting special rules for the

1 state that -- that, frankly, don't exist.

2 Now, I -- I did explain some of the evidence
3 that we've already talked about, I've listed some in
4 the motion. He has a copy of Attorney Mawhinney's
5 recorded interview, he has a copy of his client's
6 interview with the police. He's right, some of this
7 evidence is not direct, but this law makes no
8 distinction between circumstantial and direct
9 evidence. And much of this case is going to be
10 proven by circumstantial evidence.

11 Ms. Troconis's interviews with the state police
12 I think are very telling, not in what she directly
13 says, but what she doesn't say. She, basically, lies
14 through her teeth about where she was, where Mr.
15 Dulos was, what she was doing on certain dates.

16 The statement she gives track along her alibi
17 script almost exactly. So this argument that the
18 scripts themselves are -- are just these innocent
19 productions that her attorney asked her to write,
20 they turned out to be lies.

21 She admitted in the interviews that they were
22 lies, she said yes, this is not true what we wrote
23 down here and what I said to you.

24 So when counsel says well, what witness are we
25 going to put on, we're going to put on the state
26 police detective who's going to talk about what she
27 said, and that's admissible because it's a party

1 opponent statement.

2 Now, I could do this with every piece of
3 evidence but, frankly, the state doesn't have to
4 prove every ground for admissibility on every piece
5 of evidence it might admit. If the court rules that
6 the evidence is cross admissible and before trial
7 counsel succeeds in what he claims he's going to do,
8 which is show that much of it is inadmissible, then
9 the court can reevaluate the joinder decision in
10 light of those events.

11 But we're conflating multiple different issues
12 on a fairly simple one which is -- which is the
13 joinder issue.

14 THE COURT: Attorney Cummings --

15 ATTY. CUMMINGS: Yes, Your Honor.

16 THE COURT: -- is the state intending to call
17 Mr. Mawhinney as a witness?

18 ATTY. CUMMINGS: As of now, yes, I believe so.
19 Obviously, that could change. The -- counsel's
20 claiming that this is the state's star witness, I
21 think counsel has straw-manned much of what the state
22 has said in -- in this argument and in others.

23 We don't have a star witness. Attorney
24 Mawhinney's statement is one piece out of many pieces
25 pointing to the defendant's guilt in this case that
26 the state may put on at trial.

27 Now, again, Your Honor is going to be in a

1 position to make a lot of rulings on evidence prior
2 to trial, if those rulings affect the admissibility
3 of evidence that the court relied on in deciding to
4 join the cases, then certainly, Your Honor, it would
5 be fair to revisit his ruling.

6 But I think a good test for this would be if the
7 state police had only submitted one warrant with all
8 of these charges on it based on the affidavits that
9 were presented, would anyone find that improper in
10 any way? I think that the court would sign that
11 warrant and we would all be here on one case, and no
12 one would bat an eye at it.

13 It's just because the cases were all docketed
14 based on the timing of the arrests that now we have a
15 joinder motion. But I don't think it's controversial
16 that the state is going to be relying on evidence
17 from all three cases in all of the other cases.

18 Counsel makes the argument that we don't have to
19 prove a murder in order to prove a tampering. Now,
20 maybe technically, legally, we don't have to. But we
21 certainly have a right to introduce evidence of the
22 crime that's being tampered with to show the
23 defendant's mental state.

24 We're not that hamstrung simply because we don't
25 have to make a legally sufficient case we're not
26 allowed to. The state is allowed to present any
27 admissible evidence to prove its case that it has in

1 its possession.

2 So I think in this case, you know, Your Honor
3 has been given multiple pieces of evidence at this
4 point that would be cross admissible. If we want to
5 devote an entire day to going through every other
6 piece of evidence and how it might be used, we can
7 certainly do that. I don't see how that's going to
8 be a productive use of the court's time.

9 The state is not obliged to "show its hand" in
10 the detail that I'm sure counsel would like it to.
11 I'm quoting from the -- the *Frazier* case, which is
12 Connecticut 194 Conn. 223 that where the defendant
13 has at his disposal numerous materials from which to
14 gather the information necessary to his trial
15 defense, including the state's file and police
16 reports, there's not a showing of prejudice.

17 And, frankly, counsel's got multiple police
18 reports, he's got boxes of discovery, he's got to
19 actually put the legwork in to reading that material,
20 deciphering what significance it might be.

21 The state is not going to send someone to his
22 office to hold his hand and go through every piece of
23 evidence and describe how it might conceivably be
24 used at trial. This is part of doing defense work,
25 and, frankly, you know, I don't think it's fair to
26 expect the state to -- or to have to show a shopping
27 list of its evidence on a joinder.

1 We did go through a number of pieces. I think
2 the court's got the information it needs at its
3 disposal and I would ask that the court join these
4 matters for trial for the reasons that we stated in
5 our motion.

6 ATTY. SCHOENHORN: May I respond very briefly,
7 Your Honor?

8 THE COURT: Briefly, and then because it's the
9 state's motion I'll give them the last word. Yes,
10 Counsel.

11 ATTY. SCHOENHORN: All right. I -- I think
12 there's a difference, and I hear what Mr. Cummings is
13 saying, between the fact that I have all this
14 discovery -- and I've gone through all of it, versus
15 convincing a court by a preponderance of the evidence
16 that the information is cross admissible in the other
17 cases.

18 All I've heard is well, there's the
19 interrogation. I think Mr. Cummings may regret
20 ethically saying my -- offering the opinion that --
21 Quote, my client was "lying through her teeth". I
22 may feel that and say the same thing about that --
23 about the State Police Detective Kimball, but I'm
24 not. I'm simply saying that the information he
25 presented is false and/or recklessly disregarded the
26 truth.

27 It's up to a judge to decide whether or not it

1 was deliberately false (indiscernible) or by leaving
2 out certain things.

3 So when Mr. Cummings says my client was lying, I
4 have to respond by saying but you read -- you watch
5 those videos, and I don't know if the court has seen
6 them, the detectives --

7 THE COURT: I have not.

8 ATTY. SCHOENHORN: The detectives lied through
9 their teeth to my client and then tell her we know
10 that there were -- and this is why I brought it up --
11 those were body parts in those garbage bags. They
12 say that to her. She starts crying hysterically.

13 So they lied a million times, and then said oh,
14 she changed her story because they said it would be
15 not possible not to know what was in those bags.

16 So I don't want to get into a credibility fight
17 with Mr. Cummings or Mr. Colangelo, or for that
18 matter, the police detectives in this case. There's
19 a missing person, they want to solve that, I get
20 that.

21 However, I submit that when the court decides on
22 consolidating cases, particularly when they belong in
23 another jurisdiction, the state has a burden not to
24 say well, we got all this stuff, but to specifically
25 say here is what we intend to offer, which is cross
26 admissible. I don't have to guess on that, nor does
27 the court have to guess about that. And that's all I

1 wanted to say in response.

2 THE COURT: Okay. Attorney Schoenhorn, when you
3 were talking you used the term jurisdiction, I know
4 you meant venue, most --

5 ATTY. SCHOENHORN: Yeah.

6 THE COURT: -- a lot of people confuse the
7 issues. I know you're not confused, you're just
8 speaking colloquially. But --

9 ATTY. SCHOENHORN: Yes, I meant (indiscernible).

10 THE COURT: -- you concede that venue can be an
11 either or proposition. In other words, it's not a
12 zero-sum game. If venue is properly in Hartford then
13 to -- there is no other place in the state that venue
14 could possibly given -- it's all fact specific, is it
15 not? In other words, it could be an either or venue
16 situation, could it not?

17 ATTY. SCHOENHORN: Well, not for the first two
18 cases. I mean, the third -- the -- we had this
19 debate about whether Connecticut is like the federal
20 -- there's no Connecticut case that says conspiracy
21 and the underlying crime are basically the same for
22 purposes of venue or vicinage.

23 Connecticut has taken the position -- and I've
24 argued this before, I don't want to repeat from the
25 earlier back in December, but Connecticut says that
26 the (inaudible) of the -- of a conspiracy is where
27 the agreement was reached, not where someone

1 committed an overt act.

2 The feds, the federal courts have taken the
3 opposite position. So I don't know if Your Honor
4 recalls I made that argument, it's in my memorandum
5 filed in response to the -- to the venue issue.

6 And like I said, it may become where the trial
7 happens becomes jurisdictional if the court accepts
8 my Sixth Amendment argument which I argued at that
9 time. But I -- I didn't want to get into that now.

10 And I understand Your Honor's position. And I
11 know there's the -- the case that began with an O, I
12 can't remember, that disposed of that issue before
13 more recent U.S. Supreme Court cases on the
14 partitioning of the Sixth Amendment and the part that
15 says a jury in the jurisdiction created by law and
16 whether that's applicable to the state's or not.

17 All the other cases it's either a dictum or are
18 waived by the defendant, and therefore, not
19 considered for Golding purposes. I don't know if
20 that answers your question, I was trying not to go in
21 that direction --

22 THE COURT: All right.

23 ATTY. SCHOENHORN: -- for this argument today.

24 THE COURT: Well, thank you very much. Attorney
25 Cummings, last -- last closing point on this motion.

26 ATTY. CUMMINGS: Yes, Your Honor, just -- just
27 very briefly. One, I -- I'm using counsel's client's

1 own words, it was her who admitted she was not
2 truthful with the state police during her interviews.

3 As far as actual preponderance of the evidence,
4 pieces of the evidence, you know, as we indicated,
5 the testimony of Mr. Mawhinney that defendant's
6 client -- that the defendant was involved in the
7 conspiracy to murder Jennifer; that testimony would
8 certainly be relevant in any trial related to the
9 tampering of evidence or the hindering of the
10 prosecution of Mr. Dulos. Arising out of that murder
11 it shows knowledge, consciousness of guilt, motive,
12 identity.

13 As to other pieces of evidence, such as the
14 cleaning of the Toyota Tacoma, that would be relevant
15 to show that she was aware of the murder itself and
16 was a party to that. It goes to identity, motive,
17 and consciousness of guilt. All of the evidence goes
18 to complete the story.

19 I don't think the claim that we haven't
20 identified a sufficient evidentiary basis with a --
21 to a preponderance of the evidence standard is fair
22 or accurate.

23 We have discussed specific pieces of evidence
24 and it's pretty, I think, facially clear how it
25 relates to the other cases.

26 But what I'm objecting to is having to itemize
27 and go into deep detail on all of it going forward.

1 So we rest on the -- the brief the state submitted at
2 this point.

3 THE COURT: Well, the court is not, obviously,
4 going to rule from the bench today. So let's turn
5 now to the defense motion to modify the non-financial
6 conditions of the defendant's release.

7 Ms. Troconis, could you join us please, this is
8 your proceeding, at least I'd like to see your face.
9 If you don't -- you don't wish to speak that's your
10 prerogative, but could you please come on screen.

11 ATTY. SCHOENHORN: We see her, Your Honor, she
12 is there.

13 THE COURT: I'm sorry, I don't see her.

14 ATTY. CUMMINGS: Your Honor, I see her, she's
15 waiving at the camera right now.

16 THE COURT: Okay. Well, it's not coming through
17 on my screen, I'll accept your representation.

18 But I did read your -- your motion, Attorney
19 Schoenhorn, this won't take as much time as your
20 earlier argument, but what would you --

21 ATTY. SCHOENHORN: No.

22 THE COURT: -- like to say in support of it.

23 ATTY. SCHOENHORN: Yes. The court very
24 graciously has -- am I off -- I'm not on mute. The
25 court has very graciously allowed Ms. Troconis to
26 travel extensively coming back and forth. There are
27 certain things that I'm just asking now after now a

1 year, over a year and a half, that the -- the court
2 remove the GPS monitor. If they want her to check in
3 on a regular basis by calling or texting, I do not
4 have any problem with that.

5 The GPS -- the -- I -- I did some research and,
6 apparently, you know, I do have some case law not
7 from Connecticut that extreme long term GPS
8 monitoring for people who are not convicted of a
9 crime as opposed to let's say, sex offenders, may
10 indeed be considered a -- a form of punishment.
11 There's a New Jersey Supreme Court case that says
12 that, for example.

13 In addition, the fact that her -- her movements
14 are constantly being monitored albeit by the
15 Probation, I've been unable to find the rules and
16 regulations on who they are in touch with and what
17 they do with that information and how long they even
18 store it that would -- that that would, in effect,
19 constitute a Fourth Amendment violation.

20 But as a practical matter, as I said, the court
21 has allowed her to travel on planes to travel to
22 Colorado, to travel to Florida, I'm just asking --

23 THE COURT: Well, she's a mother, isn't she?

24 ATTY. SCHOENHORN: She is a mother. Her
25 daughter --

26 THE COURT: And that's why the court -- I know
27 the best interest of the child is not the standard

1 here but I'm -- I'm not insensitive to the fact that
2 a child needs her mother, and her child is apparently
3 a competitive skier and I've allowed her to go to
4 Colorado --

5 ATTY. SCHOENHORN: Right.

6 THE COURT: -- to support her daughter in those
7 endeavors.

8 But I thought your motion was predicated on a
9 desire for her to ski and the bracelet interfered
10 with the boot, is that accurate?

11 ATTY. SCHOENHORN: Well, what it -- what it is,
12 Your Honor, it's not for her to ski, it's for her to
13 accompany her daughter to the -- on a chairlift which
14 nobody's allowed on unless they have skis on.

15 So it's -- it's not possible, we talked about
16 maybe a bracelet one to put on her -- on her wrist,
17 but for reasons the -- back in the past, that was
18 rejected.

19 So I just bring this up now, she's proven
20 herself that she follows all directions. It is
21 somewhat at this point of a burden, it has to charge
22 for an hour or two every single day. I ask the court
23 that in light of her following every direction since
24 the court first released her after the first arrest
25 on June 3rd, 2019, and because of COVID, who knows
26 when we're going to even get to this case, that the
27 court consider removing the bracelet, other

1 conditions when she travels she will give notice. We
2 don't have any problem with any of those things, Your
3 Honor.

4 THE COURT: All right. Thank you. Who wishes
5 to respond to this motion?

6 ATTY. COLANGELO: I believe I'm up, Your Honor.

7 THE COURT: Okay.

8 ATTY. COLANGELO: As Your Honor indicated, she's
9 a mom, the state didn't object to any of those
10 requests for her to travel and -- and she was able to
11 do so because we knew where she was.

12 She has no community ties to Connecticut,
13 there's nothing keeping her here. Everything,
14 actually, that she has is in other parts of either
15 the country or other countries, so the GPS monitoring
16 is imperative so that we know where she is and to
17 keep her -- have the ability to know where she is,
18 Your Honor, because there's no community ties. I'll
19 just be brief.

20 If counsel wants to do a bracelet instead of the
21 monitor around her ankle, I have no objection to
22 that, Your Honor.

23 THE COURT: I don't know if that's even possible
24 given the technology. I also know from discussions
25 with Probation that I -- I believe that the new
26 batteries that these GPS units employ do not require
27 an hour or two of tie up every single day to maintain

1 a charge, but I could be wrong.

2 I don't know if there is a bracelet possibility.
3 If -- if there is --

4 ATTY. COLANGELO: I don't know.

5 THE COURT: -- I would be amenable to
6 considering it, I'm -- But, Attorney Schoenhorn,
7 anything further?

8 ATTY. SCHOENHORN: It's my understanding that
9 even if there are these new bracelets, she's not
10 being given one, she still has to charge every day.
11 And I've been receiving the -- the emails from the --
12 from the Probation or the CSSD saying oh, you're
13 battery's getting low, you have to charge it. And
14 she has to go find some place to plug in.

15 There are wrist bracelets, for reasons that I'm
16 not clear on they didn't want to give her one, but I
17 would ask that even for the timing she would -- it
18 would be ninety nine thousand times better to have a
19 wrist bracelet, which I know they can do, than an
20 ankle bracelet at this point. And we would settle
21 for that right now.

22 ATTY. COLANGELO: If they're available, Your
23 Honor, I don't have objection to that.

24 THE COURT: Well, let's -- I -- I don't want to
25 be premature and rule on their availability. First
26 of all, they also have to not only be available, but
27 being used by the State of Connecticut. I'm not

1 going to order the CSSD to go out and purchase
2 technology they're not currently employing.

3 But Counsel, I'm going to deny your motion
4 because I'm not hearing that it substantially
5 interferes with her ability to make an -- make a
6 living, it's recreational activity. Granted, it's
7 important for her daughter, but I'm not hearing
8 compelling reasons to revisit the non-financial
9 conditions.

10 I do applaud your client, she has been
11 compliant, that's why she has been allowed to travel
12 the way the court has allowed it. But I'm going to
13 keep the conditions in place without -- subject to
14 being revisited if, in fact, there is ankle -- excuse
15 me, if there is, in fact, wrist technology, number
16 one. And number two, it's in use here in the State
17 of Connecticut. Then I will take another look at it
18 because it sounds like we have an agreement on that
19 score.

20 ATTY. SCHOENHORN: And -- and while we're on the
21 subject though, Your Honor, could I at least then
22 make the oral motion that she be allowed to stay with
23 her daughter, unless she's needed back here, for the
24 time being while she's in school in Colorado while --
25 unless you need her physically present in
26 Connecticut. She -- I'm just asking that instead of
27 her having to come back and travel back and forth

1 with the way that it's been going up until now since
2 last fall.

3 THE COURT: State?

4 ATTY. COLANGELO: I'm not going to take the
5 position, Your Honor, I'll leave it up to the court.

6 THE COURT: All right. And you -- you mentioned
7 the trial, unfortunately, yes, the COVID has delayed
8 this and multiple other jury trials, I eagerly await
9 the time when we can resume that vital function.

10 I would have hoped if we had not lost 2020, nine
11 months of it, that we would have been able to try
12 this case this spring or summer. But that's -- we're
13 not even in the position to try older cases that are
14 ahead of it in -- in time. So we're going to have to
15 maintain the pretrial status quo for now.

16 But I will issue a written decision, probably
17 one incorporating both the motion to join and the
18 motion to transfer venue. But you can expect
19 something from the court, I thank you for your time.

20 Attorney Schoenhorn, because I may be the trial
21 judge, I'd rather not pre-try this case. I'm happy
22 to see if Judge White is available or if you could
23 agree with counsel. The technology does allow these
24 remote hearings so it's less burdensome for you to
25 have to come down here, you're speaking now from the
26 comfort of your home, and I applaud that, I'm a
27 little jealous.

1 But I'm saying I'm not sure Judge White's
2 available right now, I know counsel's all here on the
3 screen. He has other duties as PJ, so I'll leave
4 that to you to speak to Criminal Case Flow to get
5 some time with Judge White if you think it would be
6 productive.

7 ATTY. SCHOENHORN: That'll be --

8 ATTY. COLANGELO: Thank you.

9 ATTY. SCHOENHORN: That'll be fine, Your Honor.

10 THE COURT: All right.

11 ATTY. SCHOENHORN: There were a couple of other
12 procedural matters housekeeping matters, I was hoping
13 that we could at least address if not rule -- get a
14 ruling on.

15 THE COURT: Tell me.

16 ATTY. SCHOENHORN: One is -- one is my pending
17 motions for bill of particulars, and the other is the
18 outstanding discovery including Your Honor was going
19 to issue a ruling about the lengthy child -- I mean,
20 the child custody study that was done by the family
21 court.

22 I thought the court had indicated it was going
23 to rule before today's court date, but I may be wrong
24 about that.

25 (Phone ringing)

26 THE COURT: I'm sorry. Attorney Colangelo?

27 ATTY. COLANGELO: He has long form Informations,

1 Your Honor, that satisfies the bill of particulars.
2 I think Your Honor does have the information you need
3 to make a ruling on the report.

4 THE COURT: All right.

5 ATTY. SCHOENHORN: And I'll just note the bill
6 of -- motion for bill of particulars was filed after
7 the long form Information because in my view, it just
8 traps the statute. And even today's ruling --
9 today's argument indicates that in terms of exactly
10 what they're alleging, especially with three separate
11 conspiracies alleged, Judge, I would need a little
12 bit more information. Is it really only one, like I
13 just heard Mr. Cummings argue, or are there three
14 separate ones. And that would track what I would
15 have to do to prepare.

16 ATTY. COLANGELO: And, Your Honor, there was
17 brief filed following the case law in Connecticut as
18 to why he's not entitled to a bill of particulars
19 based on the long form. But I don't know if counsel
20 took the time to read that.

21 THE COURT: All right. Well, the court will
22 issue rulings on both of these outstanding matters.

23 ATTY. SCHOENHORN: And then, finally, Your
24 Honor, there is a -- an outstanding request. I was
25 just trying to do this off the record months ago with
26 Mr. Colangelo.

27 At the time of the search on May 31st, 2019,

1 basically, the police took every single electronic
2 devise in the house, including my client's daughter's
3 computer; my client's work computer, her mother's
4 phone and computers. So there are a number of -- of
5 electronic devices, there was nothing on those. And
6 they've just held on to them.

7 My client's daughter needs her -- her computer,
8 it had all her school work from last -- from that
9 year on it. It had a bunch of other stuff. Her
10 mother's work computer, her mother is a psychologist.
11 It had notes from her clients, they took that, as
12 well.

13 So I'm asking if the electronics of my client
14 and her family could be returned. If there's data
15 they needed on it, I won't object to them -- I mean,
16 they don't need the physical device if they've taken
17 data off it, that's what admissible, if at all, not
18 the -- the laptop or the -- or the --

19 THE COURT: The hardware.

20 ATTY. SCHOENHORN: -- cellphone. The hardware,
21 exactly.

22 ATTY. COLANGELO: When -- when counsel sent an
23 email to me, Your Honor, I asked him to give me a
24 list of the devices that he was asking for and that I
25 would look at them. I indicated that if anything was
26 going to be used as evidence that, you know,
27 obviously, we wouldn't be turning that over. But

1 everything else if we didn't find anything of
2 evidentiary value we didn't have an objection to
3 that.

4 I don't recall seeing an email from him saying,
5 hey, the laptop that's, you know, on the, you know,
6 Number 52, that's her daughter's laptop, we'd like
7 that back.

8 So you know, saying that the, you know, the IMac
9 or whatever it is, you know, he needs to be a little
10 specific so that we can make a determination as to
11 what we're going to give back to him.

12 And I indicated to him what, you know, that I
13 had no objection to that as long as there was nothing
14 of evidentiary value on them.

15 ATTY. SCHOENHORN: Yeah, Mr. Colangelo is
16 correct, on November 24th we had that exchange. The
17 trouble is by looking at a serial number on a -- on a
18 laptop, and there's like a dozen, at least, that were
19 seized of different devices, it's difficult for me,
20 especially when -- when the daughter is not in
21 Connecticut or the mother to figure out from a serial
22 number which device is which.

23 The list does not -- this was on the search, the
24 return to the court of that search warrant of the
25 house on 4 Jefferson Crossing. I can't tell which
26 one is which, I can't. My client is here, she
27 couldn't at the time even just go through every

1 receipt she had down in Florida to determine which
2 devises are which.

3 I guess the question is there are all these
4 devises in evidence or in -- in return, they're in
5 police -- the evidence locker. I -- I don't know how
6 else I could be more specific than that.

7 I seem to remember the daughter's laptop has
8 harps or some animal on it, it's obviously a child's
9 computer is my recollection.

10 THE COURT: Perhaps -- perhaps what the state
11 could do, it doesn't seem unduly burdensome. If
12 we're talking about a dozen or so pieces of
13 electronic hardware?

14 ATTY. COLANGELO: More than that, Your Honor --

15 ATTY. SCHOENHORN: Yes, yes.

16 ATTY. COLANGELO: -- I mean, there are --

17 THE COURT: Okay.

18 ATTY. COLANGELO: If he gives me a list with the
19 description --

20 THE COURT: Yeah --

21 ATTY. COLANGELO: -- of the --

22 THE COURT: -- can you give him the name and
23 brand and -- Right.

24 ATTY. COLANGELO: But, it's, Judge, you know,
25 again, trying to figure out which is which, now we
26 have to boot it up, make a determination of whose it
27 is.

1 THE COURT: No, no, I meant in terms of it's a
2 Dell laptop, or it's a -- it's an Apple iPad, that
3 kind of -- not -- not getting into booting anything
4 up. But just basically so we can distinguish the
5 relevant from the irrelevant. And if the state
6 doesn't have an evidentiary use for it, it should be
7 returned. But I'm not ordering anything at this
8 point. But just see if we can make an accommodation
9 by giving more information to allow the other side to
10 make a request. And then we'll rule if the needs for
11 court intervention.

12 ATTY. COLANGELO: That's what I was waiting for
13 for counsel to let me know what he's looking for and
14 I'll be happy to make that inquiry.

15 ATTY. SCHOENHORN: All right.

16 THE COURT: Thank you.

17 ATTY. SCHOENHORN: I will -- I will then go
18 through with my client and her, perhaps her daughter
19 and her mother to try and be more specific as to an
20 ID, some information that will make it clear of which
21 computer is which, so.

22 THE COURT: Thank you.

23 ATTY. COLANGELO: Attorney Schoenhorn, even a,
24 you know, a make and model, you know, type, color,
25 something.

26 ATTY. SCHOENHORN: All right. Okay.

27 THE COURT: Very good. All right. Counsel,

1 thank you all for your participation. Do we need --
2 we need to set another date at this time or --

3 ATTY. SCHOENHORN: Not at this time, we can --
4 we can -- I would like to, at least, find out if I'm
5 getting some of this additional discovery, like the
6 long report. Obviously, be able to review that
7 before there's further discussion.

8 Like I said, material was sent to me on Friday
9 by Mr. Cummings, thank you very much. And I haven't
10 had a chance to analyze it, I went through the type
11 of material it is, but I will obviously need to
12 digest that. So 30 days or so would be good for a
13 pretrial.

14 THE COURT: Yes.

15 ATTY. SCHOENHORN: But this, you know, I only
16 found out last week that, from Natalie, that you
17 wanted to have an argument today, and then we don't
18 have time really to just discuss the pretrial. A lot
19 of this stuff, some of this stuff we could be talking
20 about off the record --

21 THE COURT: I understand.

22 ATTY. SCHOENHORN: -- I just note for the
23 record.

24 THE COURT: Does the state anticipate
25 substantial additional discovery beyond what it's
26 already provided to this date?

27 ATTY. COLANGELO: No.

1 THE COURT: I'll open that to either prosecutor.

2 ATTY. COLANGELO: No, Your Honor.

3 THE COURT: Okay.

4 ATTY. COLANGELO: Substantial? No.

5 ATTY. SCHOENHORN: No, but I note --

6 THE COURT: Any scientific tests that are not
7 completed?

8 ATTY. COLANGELO: There are tests being
9 performed, I don't know, there are things that are
10 being completed and have not been completed, yes,
11 there is.

12 THE COURT: Okay.

13 ATTY. COLANGELO: I mean, they're working on
14 things every day, Your Honor.

15 THE COURT: All right.

16 ATTY. COLANGELO: As I get it I turn it over to
17 counsel, that's what we do.

18 THE COURT: Okay. All right. Thank you, all,
19 for your participation. We'll stand in recess.
20 Thank you.

21 *****

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NO: FST-CR200241178-T
FST-CR19-0167364-T
FST-CR19-0148553-T

: SUPERIOR COURT

STATE OF CONNECTICUT

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

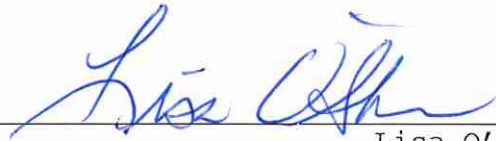
MICHELLE TROCONIS

: FEBRUARY 2, 2021

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I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable John F. Blawie, Judge, on February 2, 2021.

Dated 2/19/2021 in Stamford, Connecticut.



Lisa O'Shea
Court Recording Monitor

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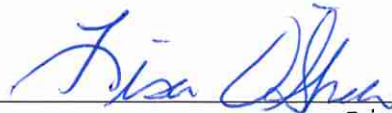
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